



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI- 173492

PRELIMINARY RECITALS

On April 4, 2016, the above petitioner filed a hearing request under Wis. Stat. §§46.85, 227.44, and 49.85(4), and Wis. Admin. Code §§HA 3.03(1),(4), to review a decision by the Department of Children and Families (the agency) to intercept the petitioner's income tax refund and apply it against a prior overpayment of Child Care Benefits (CCB). The hearing was held on May 5, 2016, by telephone.

The issue for determination is whether the agency correctly sought to intercept the Petitioner's tax refund to collect an overpayment of CCB.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED] DCF Program Supervisor
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 9, 2015 the agency issued petitioner three notices of child care overpayment stating that he was overpaid CCB as follows:
Claim # [REDACTED]: \$3914.83 for the period of 3/17/13-9/30/13;
Claim # [REDACTED]: \$994 for the period of 6/8/14-8/31/14; and
Claim # [REDACTED]: \$594.20 for the period of 3/15/15-4/30/15. Exhibit 1, pp. 13-18.
3. On October 2, 2015 the agency issued a repayment agreement to petitioner. Exhibit 3, pp. 24-26
4. On November 3, 2015 the agency issued a dunning notice to petitioner. Exhibit 4, p.28
5. On December 2, 2015 the agency issued a dunning notice to petitioner. Exhibit 4, p. 30.
6. On January 5, 2016 the agency issued a dunning notice to petitioner. Exhibit 4, p. 32.
7. On March 11, 2016 the agency issued a notice of tax intercept to petitioner. Exhibit 5.

DISCUSSION

Wis. Stat. §49.85(2)(b), provides that the Department of Children and Families (the agency) shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of child care benefits made incorrectly.

The agency must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from any state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3)(b)1.

The hearing right is described in Wis. Stat. §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department of children and families shall hold a contested case hearing under s. 227.44, except that the department of children and families may limit the scope of the hearing to exclude issues that were presented at a prior hearing *or that could have been presented at a prior opportunity for hearing.* (Emphasis added).

The petitioner has had a prior opportunity for hearing on the merits of the overpayment. The petitioner failed to appeal that matter timely, however. Therefore, the petitioner does not get another opportunity to argue the validity of that decision here.

There was no issue raised as to any payments already made on this debt. See Exhibit 6.

The policy for collecting overpayments is noted in the Wisconsin Shares Child Care Assistance Manual, §2.1.6.1, available at http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2clientpre0915.pdf. After the client is notified about the overpayments, s/he is given an opportunity to agree to a repayment schedule. If that is not done, the agency will send up to three dunning notices requesting cooperation in repayment. If there still is no agreement, the case is referred to the PACU's central recovery unit. Among the recovery actions that unit will take are liens, levies, and tax intercepts. Once the matter is sent to central collection

as being delinquent, the PACU will utilize any method available to recover the claim. Once the tax intercept process is started, there is no legal basis for stopping it. I thus must conclude that the PACU correctly utilized the tax intercept despite petitioner making payments after the third dunning notice.

I add for petitioner's information that I am bound by child care rules. The statute requires the agency to recover all child care overpayments regardless of who is at fault. Wis. Stat. §49.195(3). The Wisconsin Administrative Code, §DCF 101.23(1)(g), explains this in the following way:

"Overpayment" or "debt" means any benefit or payment received under s. 49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

And:

(3) LIABILITY. (a) Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., "parent" has the meaning given in s. 49.155 (1)

(c), Stats.

(b) Liability for repayment of an overpayment shall be joint and several.

Wis. Adm. Code, §DCF 101.23(3)(a) and (b).

This means that the petitioner is responsible for the overpayment, even if agency error had caused it. I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

The petitioner can call the Public Assistance Collection Unit to see if there is any opportunity to set up a repayment agreement to repay the debt without having his taxes intercepted, although there is no guarantee that opportunity is still available to him.

CONCLUSIONS OF LAW

1. The Petitioner was overpaid child care benefits in the amount of \$5503.03 (Claim # [REDACTED]; Claim # [REDACTED]; and Claim # [REDACTED])
2. The Department may certify the sum of \$5503.03 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

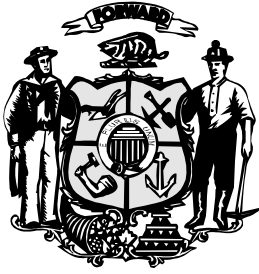
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of July, 2016

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 11, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit